

WILCOX
PLM-II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217574

DATE: September 18, 1985

MATTER OF: John J. D'Anieri

DIGEST: Employee transferred to Pompano Beach, Florida, may not be paid mileage for commuting on weekends between his Orlando residence and his permanent duty station. The fact that his superior indicated that the assignment to Pompano Beach was temporary, until a position could be found in Orlando, does not change the character of the assignment which otherwise was indefinite in duration and, thus, permanent in nature. Doubt as to its ultimate duration does not convert an indefinite assignment from permanent to temporary.

Mr. John J. D'Anieri, a civilian employee of the Department of the Army, appeals from the denial of his claim for a mileage allowance for commuting about once a week between Pompano Beach, Florida, and his residence in Orlando, Florida.^{1/} We sustain the denial of his claim based on our finding that Pompano Beach was Mr. D'Anieri's permanent duty station rather than a temporary duty location. Also, Mr. D'Anieri is not entitled to travel per diem or reimbursement of actual subsistence expenses in lieu thereof while he was assigned to duty in Pompano Beach.

BACKGROUND

On January 26, 1981, Mr. D'Anieri was transferred from the U.S. Army Reserve flight facility in Orlando, Florida, to the U.S. Army Reserve Center in Pompano Beach, Florida. Although he was issued permanent-change-of-station orders authorizing reimbursement of expenses for relocating his family and residence to Pompano Beach, Mr. D'Anieri's wife remained in the home they owned in Orlando and Mr. D'Anieri

^{1/} Mr. D'Anieri's claim was denied by our Claims Group, GGD, in Settlement Certificate No. Z-2800374, August 31, 1984. By letter of October 24, 1984, his attorney, Richard J. R. Parkinson, Esq., Parkinson and Pyle, P.A., 602 East Central Boulevard, Orlando, Florida, requested this review.

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apparently has not submitted a claim for transfer-related expenses. From January 26, 1981, until January 17, 1982, when he was transferred to a different Army Reserve facility in Orlando, Mr. D'Anieri obtained lodgings in the Pompano Beach area and commuted between there and his Orlando residence on weekends.

Mr. D'Anieri's transfer to Pompano Beach appears to have been the result of administrative efforts to remove him from an employment situation at the Orlando flight facility which had begun to affect his health. That situation has been the subject of various investigations and hearings. Although there has been no administrative determination that his reassignment was wrongful, Mr. D'Anieri's attorney has characterized his transfer to Pompano Beach as part of an attempt to ignore or cover up problems at the Orlando flight facility. We note that Mr. D'Anieri has been awarded compensation under 5 U.S.C. §§ 8101-8151 (1982), based on a determination that his condition was a work-connected injury.

In November 1980, after a confrontation with his supervisor at the flight facility and after he had filed a grievance, Mr. D'Anieri was temporarily reassigned to another Army Reserve installation in Orlando. By December 1980 he had used most of his sick leave and on the advice of his physician he did not wish to return to the Orlando flight facility following his temporary assignment. He also found it unacceptable to take leave without pay or to apply for disability retirement. His other option was to accept a position in Pompano Beach over 200 miles distant and this option he agreed to. According to Mr. D'Anieri, the transfer to Pompano Beach was to be temporary, until a suitable position could be found in the Orlando area. It is on the basis of this understanding that Mr. D'Anieri claims he accepted the reassignment to Pompano Beach even though it involved a one-grade demotion. Just prior to the reassignment, Mr. D'Anieri signed a voluntary request for change to a lower grade in which he indicated his understanding that efforts would be made to locate a position for him in grade GS-7 or at least grade GS-6 in the Orlando area.

DISCUSSION

It is Mr. D'Anieri's position that his transfer to Pompano Beach was in fact a temporary duty assignment. He

claims mileage for 93 trips between Pompano Beach and Orlando and reimbursement of actual subsistence expenses as authorized in that high-rate geographical area. The characterization of Pompano Beach as his temporary duty station rather than his permanent duty station is critical to Mr. D'Anieri's claim since an employee must bear the cost of his own transportation between his residence and his official duty station. Marie B. Ferrell, B-198381, February 13, 1981.

We note, initially, that the action taken by the Army in January 1981 was a permanent change of station with authority for Mr. D'Anieri to move his family and residence to his new station at Government expense. There is no official indication that this was ever intended to be an assignment to temporary duty even though the assignment may have been characterized as temporary in that the Army agreed to try to find a suitable position for him in the Orlando area at the earliest possible date.

However, the administrative designation of a particular location as an employee's permanent or temporary duty station is not necessarily conclusive as to its character. Frederick C. Welch, 62 Comp. Gen. 80 (1982). We have held that the duration and nature of the duties assigned are of particular importance in determining whether an assignment to a particular location is a permanent change of station. Bertram C. Drouin, 64 Comp. Gen. 205, 208 (1985). Thus, Mr. D'Anieri's claim is to be resolved not only on the basis of the orders directing his permanent change of station to Pompano Beach but also on the basis of other factors including the oral representations that the assignment would be temporary, the stated duration of the assignment, and particularly the nature of the duties assigned.

DURATION OF THE ASSIGNMENT

We have generally held that a brief assignment to be terminated on a certain date and followed by further assignment or return to a previous assignment is a temporary duty assignment rather than a permanent change of station. Compare, Peter J. Dispenzirie, 62 Comp. Gen. 560 (1983). In spite of orders directing a change of station, we have held that an assignment of 2 to 4 months in contemplation of further assignment at the end of that period should be regarded as temporary duty rather than a permanent change of station.

Nelson J. Krohn, B-200745, September 1, 1981. In contrast, we have recognized that assignments of indefinite duration are generally permanent duty assignments. William H. Buchenhorst, B-194447, August 7, 1979.

In Mr. D'Anieri's case, his assignment was for an indefinite period. It appears that he may have had reason to expect assistance in relocating back to the Orlando area and that he, justifiably, may have been in doubt as to the ultimate duration of his assignment to Pompano Beach. However, doubt as to the duration of an assignment does not convert it to a temporary assignment when the assignment is of a permanent nature in other respects. Erwin E. Drossel, B-203009, May 17, 1982; Alister L. McCoy, B-195556, February 19, 1980. Thus, Mr. D'Anieri's intent to apply for a position in the Orlando area, even when coupled with offers of assistance by his superiors, is insufficient to change the character of his assignment which otherwise was of indefinite duration and, thus, permanent in nature. Pompano Beach was the place where Mr. D'Anieri was expected to perform the major portion of his duties for an indefinite period, beginning January 26, 1981.

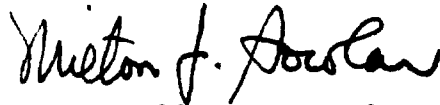
NATURE OF THE DUTIES PERFORMED

Examples of duties normally associated with a temporary duty assignment include assignment to a replacement pool for further assignment, assignment to a particular location under conditions contemplating further assignment to a new duty station, or assignment to a project that itself is transitory in nature. Bertram C. Drouin, 64 Comp. Gen. 209, *supra*. In contrast, we have held that an employee serving as an administrative assistant for 17 months could not be considered to be on temporary duty, since the record did not show that he had special skills needed to perform the assignment or that local personnel could not have been assigned to the duties. J. Michael Tabor, B-211626, July 19, 1983. In Mr. D'Anieri's case, he was assigned to an established position as an administrative supply technician in Pompano Beach. There is no indication that the duties he performed in that capacity were needed only on a transitory basis, or that the need for those services would terminate on a particular date.

CONCLUSION

Based on the indefinite duration of his assignment and the nontransitory nature of the duties he performed, we find

that Pompano Beach was Mr. D'Anieri's permanent duty station from January 26, 1981, to January 17, 1982. Its status as such is not affected by the particular reasons that prompted his transfer. We have consistently held that an administrative determination to rescind even an improper transfer does not change the nature of the transfer from permanent duty to temporary duty. David D. Reckard, B-215008, September 25, 1984; Anthony A. Esposito, B-197023, March 14, 1980, and decisions cited therein. Accordingly, Mr. D'Anieri's claim for mileage and reimbursement of actual subsistence expenses while he was employed in Pompano Beach may not be allowed.



Acting Comptroller General
of the United States